

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Case No. 1:20-CR-183

Plaintiff,

v.

Hon. Robert J. Jonker
Chief U.S. District Court Judge

KALEB FRANKS,

Defendant.

**DEFENDANT'S MOTION TO EXCLUDE INACCURATE
TRANSCRIPTS AND MEMO IN SUPPORT**

In anticipation of the start of trial on March 8, 2022, Mr. Kaleb Franks now asks the Court to exclude from presentation to the jury inaccurate transcripts of recorded statements. In support of this motion, he offers the following memorandum of law.

Legal Discussion

While Mr. Franks acknowledges the Court's discretion in this area, he would ask the Court to bar the government from using inaccurate transcripts as aids at trial, and he would ask that no transcripts, regardless of accuracy, be admitted as substantive evidence. *See, e.g., United States v. Capers*, 61 F.3d 1100, 1107 (4th Cir. 1995) (discussing how the defense inadequately challenged the government's transcript-accuracy issues and touching on how the transcripts were not actually admitted into evidence; Mr. Franks, of course, is trying to bring an adequate

challenge). Rule 403, of course, frowns on presentation of evidence that confuses the issues, misleads the jury, or wastes time. Inaccurate transcripts can do all three.

In the latest discovery, for example, a “draft” transcript of recordings of September 12 exchanges from a gathering in Luther leaves out portions of the recordings, does not accurately reflect the content of the exchanges, and does not accurately identify speakers. While some of these transcripts have a “draft” label on them, counsel has serious concerns about all of these materials.

Conclusion

For these reasons, Mr. Franks asks the Court to decline to permit the government to use any transcripts it cannot prove are accurate.

Respectfully submitted,

Date: January 14, 2022

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